

July 1, 2019

MEMORANDUM

TO: District Health Directors
Environmental Health Managers
Office of Environmental Health Services Staff
Onsite Soil Evaluators
Professional Engineers
Onsite System Operators and Installers
Water Well System Providers

THROUGH: M. Norman Oliver, MD, MA
State Health Commissioner

THROUGH: Allen Knapp, Director
Office of Environmental Health Services

FROM: Lance Gregory, Director
Division of Onsite Sewage and Water Services, Environmental Engineering,
and Marina Programs

SUBJECT: GUIDANCE MEMORANDA AND POLICY (GMP) 2019-01
House Bill 888; Hardship Guidelines

PURPOSE: This policy outlines the procedure for means testing of applicants who petition the Virginia Department of Health (VDH) for evaluation and design services for onsite sewage systems and private well pursuant to Chapter 831 of the 2018 Virginia Acts of Assembly. This policy also establishes Hardship Guidelines whereby the Virginia Department of Health (VDH) may serve as a provider of last resort for evaluation and design services for onsite sewage systems and private wells pursuant to Chapter 831 of the 2018 Virginia Acts of Assembly.

SCOPE:

This policy outlines the procedure for means testing of applicants who petition the Virginia Department of Health (VDH) for evaluation and design services for onsite sewage

systems and private well pursuant to Chapter 831 of the 2018 Virginia Acts of Assembly ([HB 888](#)). This policy also establishes Hardship Guidelines necessary to implement the transition of evaluation and design services for onsite sewage systems and private wells to the private sector, while maintaining VDH as a provider of last resort as outlined in HB 888. Property owners requesting eligible evaluation and design services that do not meet the income eligibility criteria established in HB 888 or meet the Hardship Guidelines are required to obtain evaluation and design services from the private sector.

AUTHORITY:

HB 888, as amended and effective July 1, 2018, provides authority for VDH to gradually transition evaluation and design services for onsite sewage systems and private wells to the private sector. HB 888 authorizes VDH to continue providing evaluation and design services associated with a building permit for a principal place of residence or the repair of a system that is for a principal place of residence from July 1, 2019 to June 30, 2023 for applicants that meet income eligibility criteria specified in HB 888. HB 888 also authorizes VDH to establish guidelines to maintain VDH as a provider of last resort for property owners who demonstrate a specific hardship in obtaining private sector evaluation and design services associated with a building permit for a principal place of residence or the repair of a system that is for a principal place of residence.

BACKGROUND:

VDH staff have historically served as the primary provider of site and soil evaluations and designs in the Commonwealth for onsite sewage systems and private wells. However, several pieces of legislation approved in the 1990's created a process for VDH to accept evaluations and designs from private sector service providers. Since that time, two overarching principles have emerged: VDH should continue providing regulatory oversight; and VDH should increase private sector participation to the extent possible.

Over time, and without a specific statutory mandate to require private evaluations and designs, the use of private sector service providers gained broad acceptance in many parts of the Commonwealth.

In 2016, VDH released A Plan for the Orderly Reduction and Elimination of Evaluation and Design Services by the Virginia Department of Health for Onsite Sewage Systems and Private Wells ([HB 558 Report](#)). The HB 558 Report detailed VDH's strategic vision to shift evaluation and design services for onsite sewage systems and private wells to the private sector in an orderly manner so limited VDH resources can be focused on improving public health and the environment. The HB 558 Report presented 20 specific recommendations to implement the strategic vision, including means testing by VDH to of applicants over an initial transition period and establishing guidelines for VDH serving as a provider of last resort for property owners that demonstrated specific hardships in obtaining private sector services. VDH recognized several geographic areas within the Commonwealth, as well as several application types, will be particularly difficult to transition to the private sector. VDH recommended means

testing and the development of guidelines to address situations in which owners could demonstrate a hardship in obtaining private sector services to ensure access to onsite sewage system and private well evaluation and design services for all Virginians.

Chapter 602 of the 2017 Virginia Acts of Assembly (HB 2477) directed VDH to begin eliminating site evaluation and design services for onsite sewage systems and private wells. This was accomplished by enacting recommendations from the HB 558 Report through agency policy. In 2018, the Virginia General Assembly passed HB 888 directing VDH to enact the remaining recommendation from the HB 558 Report to complete the transition of evaluation and design services to the private sector. HB 888 provides a plan to transition onsite sewage system and private well evaluation and design services to the private sector over five years. However, HB 888 maintains the ability for VDH to provide evaluation and design services throughout the transition based on means testing of applicants. HB 888 also continues the authorization for VDH to provide evaluation and design services throughout and after the five-year transition period for property owners demonstrating a specific hardship acquiring private sector evaluation and design services associated with a building permit for a principal place of residence or the repair of a failing system serving a principal place of residence.

HB 888 sets out specific income eligibility criteria for means testing of applicants from July 1, 2019 to June 30, 2023, using the federal poverty guidelines. HB 888 also directs VDH to develop guidelines for hardships, including (i) the availability of properly licensed service providers working within a locality or region, (ii) the disciplinary history of private sector providers, and (iii) the cost of private sector services. The hardship guidelines established by this policy set the criteria for property owners to request onsite sewage system and private well evaluation and design services from VDH as directed by HB 888.

EXCLUSIONS FROM MEANS TESTING AND HARDSHIP GUIDELINES

Pursuant to HB 888 all owners must seek private sector services for the following beginning July 1, 2018: onsite sewage system voluntary upgrades, certification letters, subdivision evaluations, and applications for new onsite sewage systems that are not for a principal place of residence. The means testing criteria and hardship guidelines outlined in this policy do not apply to these application types.

Evaluations and design types requiring private sector design services prior to July 1, 2018, by VDH policy are ineligible for VDH services. These services include evaluation or design for: non-residential onsite sewage systems; onsite sewage systems with a design flow over 1,000 gallons per day; alternative onsite sewage systems; alternative discharging sewage systems; and onsite sewage system designs requiring the services of a professional engineer.

MEANS TESTING:

Beginning July 1, 2019, and until June 30, 2020, property owners that submit a complete application with a household income at or below 400 percent of the federal poverty guidelines established by the U.S. Department of Health and Human Services (federal poverty guidelines)

may receive VDH evaluation and design services for: a) new or repair conventional onsite sewage systems serving a principal place of residence; b) private wells; and c) and safe, adequate, and proper evaluations for conventional onsite sewage systems serving a principal place of residence (as required by §32.1-165). Property owners seeking such services must first petition VDH to provide services using the Petition for VDH Services Form (Appendix A). Means testing of the property owner's income shall follow the same procedure as the determination of income eligibility for fee waivers (see VDH's Eligibility Guidance Document for the Regulations Governing Standards & Charges for Medical Care Services to Individuals).

From July 1, 2020, to June 30, 2021, eligibility shall be reduced to property owners with household income at or below 300 percent of the federal poverty guidelines. From July 1, 2021, to June 30, 2022, eligibility shall be reduced to property owners with household income at or below 200 percent of the federal poverty guidelines. From July 1, 2022, to June 30, 2023, eligibility shall be reduced to property owners with household income at or below 100 percent of the federal poverty guidelines. A detailed listing of the specific means testing criteria in HB 888 is included in Appendix A.

HARDSHIP GUIDELINES:

Property owners that do not meet the means testing criteria outlined in HB 888, may still be eligible to receive services from VDH. Property owners meeting any of the following hardships shall be eligible to receive VDH evaluation and design services for: a) new or repair conventional onsite sewage systems serving a principal place of residence; b) private wells; and c) safe, adequate, and proper evaluations for conventional onsite sewage systems serving a principal place of residence (as required by §32.1-165). Property owners seeking services based on the following hardship guidelines must petition VDH to provide services using the Petition for VDH Services Form.

A. Owners Eligible for Fee Waivers for Construction Permits, Repair Permits, and Pit Privies.

In addition to the specific means testing criteria outlined in HB 888, VDH has established the following income eligibilities as hardships that will apply prior to and after July 1, 2023. Any property owner that is eligible to receive a fee waiver pursuant to section 12VAC5-620-80.A of the Regulations Governing Application Fees for Construction Permits for Onsite Sewage Disposal Systems and Private Wells (12VAC5-620, the Fee Regulations) shall be eligible to receive VDH evaluation and design services.¹ Further, any property owner with income below 200 percent of the federal poverty guidelines shall be eligible to receive VDH evaluation and design services when the application is for a pit privy or for a repair of a failing onsite sewage system. Determination of eligibility for a hardship based on income shall follow the same procedure as the determination of income eligibility for fee waivers (see VDH's

¹ Section 12VAC5-620-80.A establishes the fee waiver when an owner whose family income is at or below the 2013 Poverty Income Guidelines for the 48 Contiguous States and the District of Columbia established by the [Department of Health and Human Services, 78FR 5182](#) (January 24, 2013), or any successor guidelines, shall not be charged a fee.

Eligibility Guidance Document for the Regulations Governing Standards & Charges for Medical Care Services to Individuals).

B. Replacement Wells and Well Abandonments.

Any property owner that is eligible to receive a fee waiver for the replacement or abandonment of a private well pursuant to section 12VAC5-620-80.D or 12VAC5-620-80.E of the Fee Regulations shall be eligible to receive VDH evaluation and design services.²

C. Safe, Adequate, and Proper Evaluations.

Any property owner seeking a safe, adequate, and proper evaluation for a conventional onsite sewage systems serving a principal place of residence (as required by §32.1-165) shall be eligible to receive VDH evaluation services from July 1, 2019 to June 30, 2020. Over this period, VDH will use improved data collection regarding the number of safe, adequate, and proper evaluations conducted by private sector service providers to inform necessary revisions to the Hardship Guidelines.

D. Number of Private Sector Providers.

Any property owner seeking evaluation and designer services in a locality with an insufficient number of private sector service providers shall be eligible to receive VDH evaluation and design services. A locality will be deemed to have an insufficient number of private sector service providers when the number of bare applications received in the locality over the previous state fiscal year (July 1st to June 30th) that resulted in the issuance of a permit exceeds the estimated number of additional designs that the private sector could provide in that locality. Once a locality is determine to have a sufficient number of private sector services provides, it shall maintain that designation. VDH will estimate the number of additional designs that the private sector could provide in a locality by using the following equation:

$$(P \times M)1.25 - W = X$$

P = Number of private sector providers that submitted at least five evaluations and designs within the locality over the previous state fiscal year (July 1st to June 30th).³

A = Average number of evaluations and designs per private sector provider submitted within the region over the previous state fiscal year (July 1st to June 30th) that resulted in a permit. (A map showing the specific regions is provided below; Map 1.)

² Section 12VAC5-620-80.D allows the fee to be waived for any person applying for a construction permit for the replacement of a private well. Section 12VAC5-620-80.E allows the fee to be waived for any person applying for a permit to properly and permanently abandon or decommission an existing well on property that is their principal place of residence.

³ For onsite sewage system construction services, “private sector providers” will include Onsite Soil Evaluators (OSE) and Professional Engineers (PE). For private well construction services, “private sector providers” will include OSEs, PEs, and Water Well System Providers. For safe, adequate, and proper evaluations, “private sector providers” will include OSEs, PEs, Onsite Sewage System Installers, Onsite Sewage System Operators, and individuals certified by the National Sanitation Foundation (or equivalent).

1.25 = Private sector growth factor.

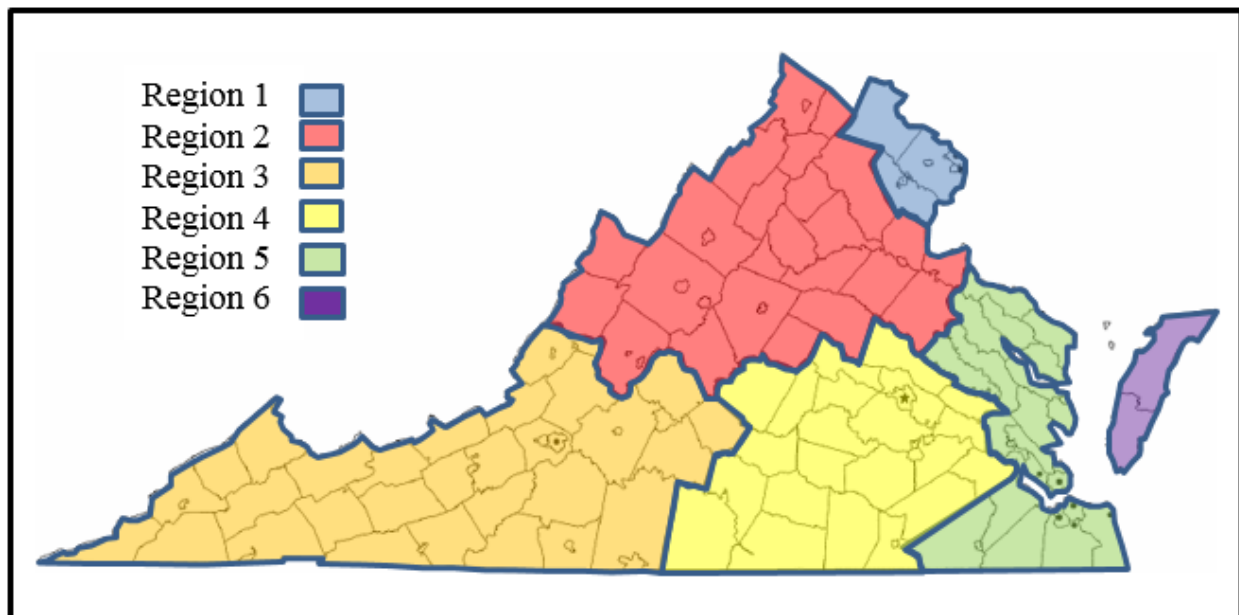
W = Total number of private sector evaluations and designs submitted within the locality over the previous state fiscal year (July 1st to June 30th) that resulted in a permit.

X = Estimated number of additional evaluations and designs that could be provided by the private sector.

Any locality receiving 10 or fewer total applications over the previous state fiscal year (July 1st to June 30th) will be determined to have a sufficient number of private sector service providers.. Any locality that receives more than 10 total applications over the previous state fiscal year (July 1st to June 30th), but has less than two private sector service providers submitting at least five evaluations and designs each in the previous state fiscal year (July 1st to June 30th) will be determined to have an insufficient number of private sector service providers.

VDH will use the agency's statewide environmental health database to determine P, A, and W. For determining the average number of private sector designs, VDH will use Map 1 to set each region for review, and will include only private sector providers submitting at least 10 evaluations and designs within the region over the previous state fiscal year (July 1st to June 30th). The equation will be run separately for onsite sewage system evaluations and designs, and private well evaluations and designs. Therefore, it may be determined that a locality has an insufficient number of private sector service providers for one service, but an adequate number of private sector service providers for the other.

Map 1: Service Provider Regions



VDH will post a list of localities (independent cities and counties) with an insufficient number of private sector services providers on the agency website. The list will be updated annually using information from the agencies statewide environmental health database for the

previous state fiscal year (July 1st to June 30th) and posted no later than July 15th. A copy of the list is included in Appendix D.

Private sector service providers that receive a disciplinary action, that is not a revocation or suspension, against their license from the Department of Professional and Occupational Regulations (DPOR) will not be counted towards the number of private sector providers submitting evaluations and designs within a locality the state fiscal year (July 1st to June 30th) in which the disciplinary action was in effect by DPOR.

E. Availability of Private Sector Service Providers.

Owners shall qualify for a hardship to receive evaluation and design services for new onsite sewage systems serving a principal place of residence when a private sector provider is not available to conduct an initial site visit within 15 business days of the date of the owners petition for services to the local health department. Owners shall qualify for a hardship to receive evaluation and design services for new private wells when a private sector service provider is not available to conduct an initial site visit within 15 business days of the date of the owners petition for services to the local health department. Owners shall qualify for a hardship to receive evaluation and design services to repair onsite sewage systems when a private sector provider is not available to conduct an initial site visit within five business days of the date of the owners petition for services to the local health department. Owners shall qualify for a hardship to receive safe, adequate, and proper evaluation services (as required by §32.1-165) when a private sector provider is not available to conduct an initial site visit within 15 business days of the date of the owners petition for services to the local health department. Availability is based on the private sector provides ability to conduct an initial site visit, and does not include any delays resulting from actions required to be completed by the owner (e.g. surveying the property) prior to the initial visit.

Comments on the First Draft Hardship Guidelines were wide ranging on the appropriate means for VDH to verify that private sector service provides are not available. To assist in VDH's determination for the best course of action, the Second Draft Hardship Guidelines provide several potential options. We greatly appreciate you input on the strengths and weaknesses of each of these options.

Option 1:

Property owners must contact at least two private sector providers prior to petitioning VDH for services. The owner must provide the names of the private sector providers contacted on the Petition for VDH Services Form and the timeline provided.

Option 2:

Property owners must contact all private sector providers working within the applicable locality prior to petitioning VDH for services. The owner must provide the names of the private sector providers contacted on the Petition for VDH Services Form and the timeline provided.

Option 3:

Property owners must contact at least two private sector providers prior to petitioning VDH for services, and must obtain a written statement from the service provider verifying that the service provider is not available. The owner must provide the written statements with the Petition for VDH Service Form.

Option 4:

The availability of private sector service providers shall be determined based on the backlog of work for private sector providers. Local health departments shall contact all private sector service providers servicing the locality on a (monthly, quarterly, or annual) basis to request their current backlog for: a) new or repair conventional onsite sewage systems serving a principal place of residence; b) private wells; and c) and safe, adequate, and proper evaluations for conventional onsite sewage systems serving a principal place of residence (as required by §32.1-165).

Option 5:

The availability of private sector service providers shall be determined based on reporting from private sector providers. Local health departments shall contact all private sector service providers servicing the locality on a (monthly, quarterly, or annual) basis to ask whether the provided is available within the allotted timeframe for: a) new or repair conventional onsite sewage systems serving a principal place of residence; b) private wells; and c) and safe, adequate, and proper evaluations for conventional onsite sewage systems serving a principal place of residence (as required by §32.1-165).

F. Public and Non-Profit Funded Projects

Projects that will be wholly or partially funded by public funds or funds from a non-profit organization shall be considered a hardship, provided the evaluation and design services required are outside of the exclusions of this policy (e.g. evaluations and designs for conventional onsite sewage systems equal to or less than 1,000 GPD) and provided the recipient of the funds meets the means testing criteria for VDH services.

G. Further Considerations.

Owners that do not qualify for a specific hardship outlined in this policy may petition the District Health Director for further consideration provided the requested evaluation and design service is not exempt from the hardship guidelines. The District Health Director may delegate review of such request to the District Environmental Health Manager. Such requests will be reviewed on a case-by-case basis, and the final determinations will be tracked by each local health district. The reviewer's evaluation shall consider the effect granting the request will have on: the agency's vision to transition evaluation and design services to the private sector; the

operation of the proposed onsite sewage system or private well; and the effect on protection of public health and the environment.

F. Annual Review.

VDH will conduct a review of this policy annually until at least July 1, 2023. The review shall include the following:

1. Recommendations for revisions provided by the Sewage Handling and Disposal Advisory Committee and other stakeholders.
2. Analysis of requests for VDH services pursuant to income eligibility criteria in Part 1, §4 of HB 888 to determine whether the income eligibility criteria in this policy should be revised.
3. Analysis of the estimated number of additional evaluations and designs that could be provided by the private sector within localities versus the actual increases observed over the previous state fiscal year (July 1st to June 30th) to determine whether modification to the equation in Section IV is necessary.
4. Analysis of request for consideration of hardships not specified within these Hardship Guidelines and determinations rendered for each case by District Health Directors to determine whether additional specific hardships or exclusion are necessary.
5. Analysis of the percent of private sector safe, adequate, and proper evaluations.
6. Analysis of the percent of private sector evaluations and designs for alternative onsite sewage system and conventional onsite sewage systems to determine whether additional verification of property owner disclosure is required.⁴
7. To assist property owners in making informed decisions regarding onsite sewage system and private well evaluation and design services, VDH will conduct surveys regarding the cost of private sector services. Information regarding the average cost of private sector services will be posted on the agency website with breakdowns at the state, regional, and locality level.
8. Update the policy based on changes to the Federal Poverty Guidelines.

A copy of VDH's annual review shall be posted on the agency website.

⁴ Private sector service providers are required to disclose to the property owner when a conventional onsite sewage system is an option.

Appendix A
Petition for VDH Services Form

I, (property owner name), am petitioning VDH to provide evaluation and design services based on (select one):

- ☐ Means test (household income at or below 400% of the federal poverty guidelines)
☐ VDH Hardship Guidelines

If you selected VDH Hardship Guidelines, please check all of the following guidelines that apply:

- ☐ Qualify for fee waiver pursuant to 12VAC5-620-80.A.
☐ Replacement well.
☐ Well abandonment.
☐ Safe, Adequate, and Proper Evaluation.
☐ Onsite sewage system repair – income below 200% of the federal poverty guidelines.
☐ Pit privy – income below 200% of the federal poverty guidelines.
☐ Insufficient number of private sector service providers.⁵
☐ Fewer than 2 private sector services providers.⁶
☐ Private sector not available within 15 Days – new onsite sewage system, new private well, or safe, adequate, and proper evaluation. Provide the names of private sector services providers contacted and timeframe:

☐ Private sector not available within 5 Day – repair onsite sewage system Provide the names of private sector services providers contacted and timeframe:

- ☐ Public or non-profit funded project.
☐ Other: If other, please provide a detailed description of your hardship in obtaining private sector evaluation and design services along with any relevant documents that you believe support your request. If your request is based on the cost of private sector evaluation and design services, please provide the name of at least two private sector service provider you contacted, along with written estimates provided by each. (Detailed description can be attached)

Owners Signature

Date

Petition for services ☐ Approved ☐ Denied by _____

⁵ (Insert link to VDH website – list of localities with insufficient number of private sector service providers.)

⁶ (Insert link to VDH website – list of localities with fewer than 2 private sector service providers.)

Appendix B
U.S. Department of Health and Human Services
Federal Poverty Guidelines (FPG)

Means Testing Criteria – July 1, 2019 to June 30, 2020

Persons in Family/Household	400% of Federal Poverty Guidelines
1	\$49,960
2	\$67,640
3	\$85,320
4	\$103,000
5	\$120,680
6	\$138,360
7	\$156,040
8	\$173,720

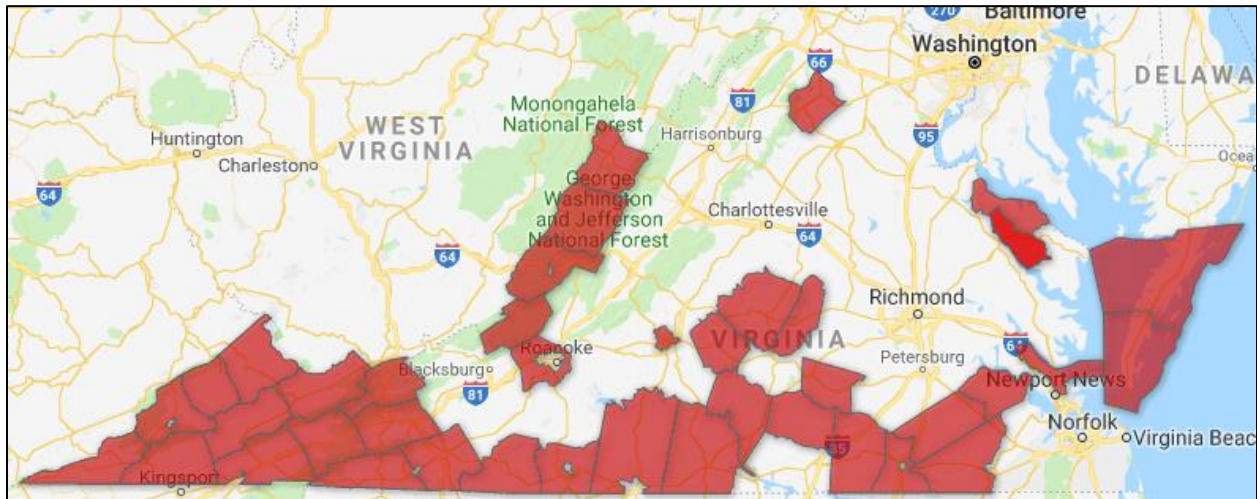
Source: U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation;

<https://aspe.hhs.gov/poverty-guidelines>

Appendix C
Hardship Guidelines Summary

Excluded from Hardship Evaluation	Qualify for Hardship
Onsite Sewage System Voluntary Upgrades	New Onsite Sewage System for a Principal Place of Residence– Owner Qualifies for Fee Waiver Under 12VAC5-620-80
Certification Letters	All SAPs
Subdivision Evaluations	Replacement Wells
New Onsite Sewage Systems Not For a Principal Place of Residence	Well Abandonments
Non-residential Onsite Sewage Systems	Conventional Onsite Sewage System Repairs – Owner income below 200% of Federal Poverty Guidelines
Onsite Sewage Systems Greater than 1,000 GPD	Pit Privy – Owner income below 200% of Federal Poverty Guidelines
Alternative Onsite Sewage Systems	VDH Determines Locality Has an Insufficient Number of Private Sector Service Providers.
Alternative Discharging Sewage Systems	Any Locality With Fewer Than 2 Private Sector Services Providers Submitting at Least 5 Evaluations and Designs Each in the Previous State Fiscal Year
Systems Requiring a Professional Engineer	New Onsite Sewage System for Principal Place of Residence– Private Sector Not Available Within 15 Business Days
Localities Receiving 10 or Fewer Total Applications	New Private Well – Private Sector Not Available Within 15 Business Days
	Conventional Onsite Sewage System Repairs – Private Sector Not Available Within 5 Business Days
	SAP – Private Sector Not Available Within 15 Business Days
	Public or Non-profit funded project.

Appendix D
Localities with an Insufficient Number of Service Providers – Onsite Sewage System
Construction



List of Localities Meeting Hardship

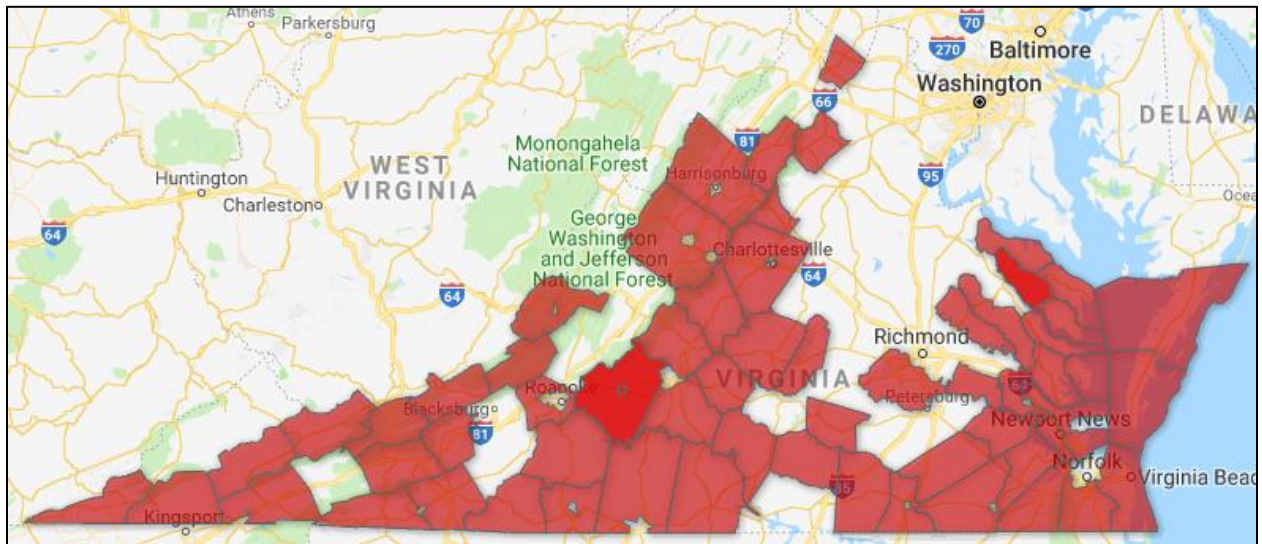
Accomack
Bland
Carroll
Dickenson
Henry
Lynchburg
Pittsylvania
Russell
Surry
Westmoreland

Alleghany
Brunswick
Charlotte
Grayson
Highland
Northampton
Rappahannock
Scott
Sussex
Wise

Appomattox
Buchanan
Craig
Greensville
Lee
Nottoway
Richmond Co.
Smyth
Tazewell
Wythe

Bath
Buckingham
Cumberland
Halifax
Lunenburg
Patrick
Roanoke Co.
Southampton
Washington
York

Localities with an Insufficient Number of Service Providers – Private Well Construction

**List of Localities Meeting Hardship**

Accomack	Albemarle	Alleghany	Amherst
Appomattox	Augusta	Bedford	Bland
Brunswick	Buckingham	Campbell	Carroll
Charles City	Charlotte	Chesapeake	Chesterfield
Clarke	Craig	Cumberland	Franklin Co.
Giles	Gloucester	Grayson	Greene
Greensville	Halifax	Hampton	Henry
Isle of Wight	James City	King & Queen	King William
Lancaster	Lee	Lunenburg	Mathews
Middlesex	Nelson	Newport News	Northampton
Northumberland	Nottoway	Page	Patrick
Pittsylvania	Pulaski	Rappahannock	Richmond Co.
Roanoke Co.	Rockingham	Russell	Scott
Southampton	Suffolk	Surry	Sussex
Tazewell	Virginia Beach	Washington	Westmoreland
Wythe	York		

Localities with an Insufficient Number of Service Providers – Safe, Adequate, and Proper
Evaluations

All localities. Safe, adequate, and proper evaluations are listed as an eligible hardship.

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